

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #3	CCRB Case #: 201905340	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/09/2019 1:06 AM, Sunday, 06/09/2019 3:45 AM	Location of Incident: In front of § 87(2)(b); 18th Precinct stationhouse	Precinct: 18	18 Mo. SOL 12/9/2020	EO SOL 7/26/2021	
Date/Time CV Reported Mon, 06/10/2019 8:24 AM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 06/19/2019 9:36 AM		
Complainant/Victim	Type	Home Address			
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)			
Witness(es)	Home Address				
§ 87(2)(b)	§ 87(2)(b)				
Subject Officer(s)	Shield	TaxID	Command		
1. SGT Patrick Cherry	02002	926676	CTERRDV		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Gerard Scparta	31201	964760	MTN PCT		
2. POM Adam Bringle	16327	929779	MTN PCT		
3. POM Messiah Timmons	11865	964802	MTN PCT		
4. POM William Mackay	26565	961416	MTN PCT		
5. POM William Buckley	12146	961657	MTN PCT		
Officer(s)	Allegation	Investigator Recommendation			
A.SGT Patrick Cherry	Abuse: In front of § 87(2)(b) in Manhattan, Sergeant Patrick Cherry threatened to arrest § 87(2)(b)	§ 87(2)(b)			
B.SGT Patrick Cherry	Abuse: At the 18th Precinct stationhouse, Sergeant Patrick Cherry threatened to arrest § 87(2)(b)	§ 87(2)(b)			

Case Summary

On June 9, 2019, § 87(2)(b) filed this complaint in person at the 18th precinct stationhouse. It was referred to IAB generating original log #19-22614. On June 19, 2019, the case was received by CCRB and by Investigator Magdalena Azmitia. On December 17, 2019, the case was reassigned to Investigator Rachel Adler.

On June 9, 2019, at approximately 1:06 A.M., § 87(2)(b) called 911 after his niece, § 87(2)(b) would not allow him to enter his legal residence, § 87(2)(b) in Manhattan. PO Gerard Scparta, PO Messiah Timmons, PO William Mackay, and PO William Buckley from the 18th precinct responded and called for assistance from Sgt. Patrick Cherry, the precinct's patrol supervisor, who arrived with PO Adam Bringle, his operator. While speaking with § 87(2)(b) in front of his apartment building, Sgt. Cherry allegedly threatened to arrest § 87(2)(b) (**Allegation A: Abuse of Authority: § 87(2)(g)**). At approximately 3:45 A.M., § 87(2)(b) went to the 18th precinct stationhouse to fill out a complaint form, during which time Sgt. Cherry allegedly threatened to arrest him again (**Allegation B: Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was not arrested or given any summonses.

BWC footage attached to IAs 40-45 and IAs 49-50 from the incident was obtained from Sgt. Cherry and PO Bringle, as well as PO Scparta, PO Timmons, PO Mackay, and PO Buckley (**04-11 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of § 87(2)(b) in Manhattan, Sergeant Patrick Cherry threatened to arrest § 87(2)(b)

It is undisputed that on June 9, 2019 at approximately 1:06 A.M., officers from the 18th precinct arrived at § 87(2)(b)'s apartment in response to his 911 call, after § 87(2)(b)'s niece, § 87(2)(b) would not allow him into his apartment and removed his belongings from the apartment. Officers first spoke with § 87(2)(b) who was standing outside of the building. They then went upstairs and spoke to § 87(2)(b) informing her that the matter had to be decided by the family court. During this time, the officers called for assistance from the patrol supervisor, Sgt. Cherry, who arrived with his operator, PO Bringle. Sgt. Cherry spoke to § 87(2)(b) outside and then went upstairs to speak to § 87(2)(b) whom he convinced to place § 87(2)(b)'s belongings back inside and to allow § 87(2)(b) to return to the apartment. Sgt. Cherry then went downstairs to speak to § 87(2)(b) again.

In his testimony to CCRB, § 87(2)(b) stated that when Sgt. Cherry came back downstairs, he told § 87(2)(b) that he could return to his apartment but that if Sgt. Cherry received another call from the location and had to return, § 87(2)(b) would be arrested (**01 Board Review**). § 87(2)(b) stated that, although he had not reported it, § 87(2)(b) had been violent toward him on several occasions. § 87(2)(b) then asked Sgt. Cherry whether he would be arrested if § 87(2)(b) attacked him and he called the police. Sgt. Cherry stated that § 87(2)(b) would go to jail and he would let § 87(2)(b)'s parole officer sort everything out. Sgt. Cherry never specified what § 87(2)(b) would be arrested for.

According to Sgt. Cherry's testimony, once downstairs, officers told § 87(2)(b) that he could reenter the apartment (**03 Board Review**). When § 87(2)(b) responded that he did not want § 87(2)(b) to remain in the apartment, Sgt. Cherry explained that § 87(2)(b) could only be evicted through the court system, not the police. § 87(2)(b) then stated that he would handle the situation himself, which Sgt. Cherry understood to mean that § 87(2)(b) would go upstairs and commit an unspecified crime. Sgt. Cherry told § 87(2)(b) in an open-ended and non-concrete way that if he committed a crime, there would be consequences. Sgt. Cherry testified that he did not tell § 87(2)(b) he would arrest him since there was no evidence of a crime and nothing to arrest § 87(2)(b) for.

None of the BWC footage captures the conversation as § 87(2)(b) or Sgt. Cherry described it. However, at 3:35 minutes in Sgt. Cherry's BWC footage attached to IA 49, Sgt. Cherry references prison in conversation with § 87(2)(b) using the way the criminal justice system works as an analogy

to the way the civil system works (**05 Board Review**). Sgt. Cherry states, “If judges didn’t do their job, we would have put handcuffs on you, drove you to freaking Green Haven, and dropped you off. That’s not how it works. We have to take you to court, the DA does their thing, they talk to your lawyer, they go before a judge, the judge makes a decision, and you end up in Green Haven. [...] So hopefully this analogy from the criminal justice system over to the civil system – hopefully the analogy makes sense. The judge has to review the facts and apply the law.”

Both Sgt. Cherry’s and PO Bringle’s BWC begin in the middle of the conversation between the officers and § 87(2)(b) and so it is unknown whether Sgt. Cherry threatened to arrest § 87(2)(b) prior to the beginning of the recordings. § 87(2)(g)

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§ 87(2)(g)

Allegation (B) Abuse of Authority: At the 18th Precinct stationhouse, Sergeant Patrick Cherry threatened to arrest § 87(2)(b)

It is undisputed that on June 9, 2019 at approximately 3:45 A.M., after leaving § 87(2)(b)’s apartment building, Sgt. Cherry and PO Bringle returned to the 18th precinct stationhouse, where PO Bringle went on administrative duty. It is further undisputed that at approximately the same time, § 87(2)(b) arrived at the stationhouse to file a Civilian Complaint Report worksheet.

§ 87(2)(b) testified that while he was at the stationhouse, Sgt. Cherry asked him if he still wanted to file the complaint and gave § 87(2)(b) the complaint form. (**01 Board Review**). Sgt. Cherry then stated that if he had to return to § 87(2)(b)’s apartment building, § 87(2)(b) would be arrested. According to Sgt. Cherry’s testimony, when § 87(2)(b) arrived in the stationhouse, he handed him the Civilian Complaint Report worksheet and immediately activated his BWC (**03 Board Review**). Sgt. Cherry further testified that neither he nor any of the other officers at the desk discussed the incident that had occurred in § 87(2)(b)’s apartment while § 87(2)(b) filled out the form. Sgt. Cherry’s BWC footage, which is attached to IA 50, begins with Sgt. Cherry handing § 87(2)(b) a complaint form at 0:38 seconds in the video and ends with § 87(2)(b) leaving the stationhouse at 1:00:28 minutes in the video (**06 Board Review**). Since both § 87(2)(b) and Sgt. Cherry testified that their interaction began with Sgt. Cherry giving § 87(2)(b) the form, the video appears to depict the interaction in its entirety (**01, 03 Board Review**). At no time in the BWC footage does Sgt. Cherry threaten to arrest § 87(2)(b).

Sgt. Cherry’s BWC footage capturing the incident at the stationhouse contains only two interactions in which arrest is referenced, neither of which involve Sgt. Cherry. At 9:44 minutes in the video, after asking an unidentified sergeant about protection orders, § 87(2)(b) states, “If I go back upstairs and something happens, and you put cuffs on me, I told you I feared for my safety,” (**06 Board Review**). In the second instance, after § 87(2)(b) asks questions about allowing individuals into his home, an unidentified officer states at 56:05 minutes, “If you’re going to get into an altercation with her or something like that, and you’re on parole, your best bet is to deviate from it and call 911.” § 87(2)(b) replies, “If I call 911, I’m going to jail.” The officer replies, “That’s not the case [...] as long as there’s no aggression done or anything that’s violating the law, you’re not going to jail.”

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**13 Board Review**).
- Sgt. Cherry has been a member of service for 19 years and has been a subject in 14 other CCRB complaints and 37 other allegations, of which 10 were substantiated:
 - 200305443 involved substantiated allegations of frisk and physical force against Sgt. Cherry. The Board recommended charges and the NYPD found him not guilty.
 - 200400928 involved substantiated allegations of stop, question, frisk, and search against Sgt. Cherry. The Board recommended charges and the NYPD found him not guilty.
 - 201502336 involved substantiated allegations of threat of arrest, threat of summons, vehicle stop, discourteous action, discourteous word, and offensive language against Sgt. Cherry. The Board recommended charges and the NYPD imposed a forfeiture of 30 vacation days.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of January 28, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**15 Board Review**).

§ 87(2)(b), § 87(2)(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad No.: 3

Investigator: _____	Investigator Rachel Adler	_____
Signature	Print Title & Name	Date

Squad Leader: _____	_____	_____
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date